

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3789 of 1987

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

BAGADA RAMESHKUMAR V

Versus

BHAVNAGAR MUNICIPAL CORPN

Appearance:

1. Special Civil Application No. 3789 of 1987
MR KIRAN YAJNIK for Petitioner
MR JR NANAVALI for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 17/06/2000

ORAL JUDGEMENT

Heard the learned advocates.

2. The petitioner claims that he belongs to Scheduled Caste. He was appointed as a Junior Clerk by

the Bhavnagar Municipal Corporation, the respondent herein [hereinafter referred to as, 'the Corporation'] in the year 1974. In the year 1976, the Government adopted policy of reservation in promotional cadres also. On 20th April, 1976, the Government issued a circular calling upon all the Municipalities/ Corporations to implement the reservation policy adopted by the Government scrupulously failing which the grant of the concerned Municipalities would be forfeited. It is submitted that the petitioner was the senior most Junior Clerk in the Corporation and in that view of the matter and in view of the aforesaid policy, he ought to have been promoted as Inspector, as the reserved category candidate. The petitioner has also indicated couple of incidents in which junior clerks were promoted as Inspectors. Mr. Yagnik submitted that the petitioner being the senior most Junior Clerk, he ought to have been promoted as Senior Clerk on the post reserved for Scheduled Caste in the year 1977 and further promotion to the post of Sub-Inspector and the petitioner ought to have been promoted as Inspector in the year 1983. The Corporation has deliberately acted contrary to the reservation policy of the Government and denied the promotions to which the petitioner was legitimately entitled. Earlier, the petitioner had also preferred a writ petition being Special Civil Application No. 6117 of 1983 challenging appointment of one Shri Bachubhai Dudabhai as Octroi Inspector. The said petition and some other writ petitions preferred by other employees of the Corporation were decided by this Court [Coram : Hon'ble Mr. Justice A.M Ahmadi] on 25th June, 1985. The Court held that the said writ petitioners were also eligible for direct appointment to the post of Inspector. The Court accordingly directed the Corporation to consider submissions of the petitioner and if he were not promoted, the Corporation should communicate the reasons in writing in support of their decision to the petitioner. Eventually, the order of appointment of said Shri Bachubhai Dudabhai was quashed and set-aside and the Corporation was directed to make a fresh appointment to the said post.

The petition is contested by the Corporation. IT is contended that since the aforesaid judgment of this Court no direct appointment has been made to the post of Inspector, the question of considering the case of the petitioner for direct appointment to the post of Inspector, therefore, did not arise. It is also denied that the petitioner at the relevant time was senior most Junior Clerk, as averred by him. It is contended that the petitioner was confirmed as Junior Clerk in the year

1978 and was at the relevant time at Serial No. 92 in the seniority list of the cadre of Junior Clerks. There were several Junior Clerks senior to the petitioner who belonged to the Scheduled Caste or Scheduled Tribe and also had a right for being considered for further promotion on the reserved vacancies. It is also denied that promotion from the post of Junior Clerk can be made to that of Inspector or Superintendent, as averred. It is contended that the hierarchy of cadres in the Corporation is as under :-

- (i) Junior Clerk
- (ii) Senior Clerk
- (iii) Sub-Inspector
- (iv) Inspector
- (v) Superintendent

It is contended that no direct promotion, therefore, can be made from the post of Junior Clerk to that of Inspector as prayed for by the petitioner. It is also denied that the petitioner had spotless and satisfactory service career. The petitioner was found guilty of misconduct for which he was, by order dated 20th February, 1990, visited with punishment of fine of Rs. 1,000/= and stoppage of two increments. However, on 13th December, 1991, the petitioner was promoted as Senior Clerk on the reserved vacancy and on 19th February, 1994, he was given further promotion to the post of Sub-Inspector in the reserved category on roster point. While dealing with the incidents cited by the petitioner, it is submitted that the said persons viz., Shri R.J Jani and Shri J.J Trivedi were promoted to the post of Superintendent and Stores Keeper respectively while they were holding charge of the said post. Besides, no person belonging to reserved category were eligible for such promotion. Further, those posts were filled on 1st May, 1976 when the petitioner was not in service. Dealing with the case of one Shri Dilip Dave, it is stated that said Shri Dilip Dave was not promoted to the post of Inspector but was appointed as an Inquiry Officer by direct appointment. It is stated that six persons referred to in paragraph 4 of the Affiavit-in-Rejoinder made by the petitioner were eligible for appointment to the post of Sanitary Inspectors and were accordingly promoted as Sanitary Inspectors. While one Shri Sagar C. Bhatt was appointed as Personal Assistant to the Commissioner and his appointment is subject matter of challenge in Special Civil Application No. 2879 of 1987.

Mr. Yagnik has relied upon the seniority list of Junior Clerks and has asserted that the petitioner was

appointed in the year 1974. Upon perusal of the said seniority list, it appears that the petitioner was first engaged as daily wager on 23rd August, 1974 and his service was regularized with effect from 1st July, 1978. In my view, the petitioner's claim for further promotion prior to the year 1978 is not sustainable. The petitioner could not have claimed further promotion in the Corporation while he was serving as a daily wager. Such promotions could have been made after his service was regularized. Further, the claim for promotion to the post of Senior Clerk from the year 1977 is grossly belated. It appears that in his earlier petition ie., Special Civil Application No. 6167 of 1983 also, the petitioner had not claimed such promotion. The claim raised in the present petition shall, therefore, be barred by the principles of constructive res judicata also. Besides, the contention is not supported by the necessary averments. The only relief prayed in the petition is that of promotion to the post of Inspector and there has been no reference as regards the promotions to the post of Senior Clerk and Sub-Inspector. Even if the petitioner were entitled to accelerated promotion on the vacancy reserved for scheduled caste, the petitioner cannot jump the line of hierarchy and claim direct promotion to the post of Inspector. Further as recorded hereinabove, the petitioner has been given promotions in the years 1991 and 1994 on the reserved vacancies. In my view, the petitioner therefore, cannot have legitimate grievance in respect of his non-promotion. Further, the averments made in this regard are vague. It is not made out whether at the relevant time any vacancy was available and that such vacancy, if reserved for SC candidate, was actually filled by a person not belonging to that category. As pointed out in the affidavit filed by the Corporation, it appears that there were many Junior Clerks senior to the petitioner who belonged to Schedule Caste. The petitioner could not have claimed preference over all those Schedule Caste Junior Clerks.

In view of the above discussion, the petition is misconceived. The relief prayed for by the petitioner cannot be granted. The petition is, therefore, dismissed. Rule is discharged. Interim relief is vacated.

Prakash*